THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.25516 of 2005

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Dated:30.11.2005

Between:

M.Ravindranath,

S/o.M.Lakshmaiah, Occ:Business,

Shop No.47, HUDA Complex,

Tarnaka, Secunderabad, and others.

..... PETITIONER

AND

The Hyderabad Urban Development Authority,

Rep. By its Secretary,

Paigah Palace, Police Line,

Begumpet, Hyderabad.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.25516 of 2005

ORDER:

The petitioners assail the letter dated 11.11.2005 of the Secretary of the Hyderabad Urban Development Authority (HUDA), the respondent herein. They seek a declaration that the said impugned letter is illegal and arbitrary and also contrary to the judgment of this Court in W.P.No.9697 of 1998 and batch, dated 11.08.2005.

HUDA constructed a commercial complex at Tarnaka in Secunderabad. These shops were leased out to various persons. Petitioner Nos.1 to 4 are the lessees in respect of shop Nos.47, 50, 28 and 56 respectively. The allotment was made in three phases during 1981, 1984 and 1985. The lessees who were allotted the shops in 1981 and 1985 were required to pay the rentals at the rate of Rs.1.00 per square

feet, whereas the lessees who were allotted the shops in 1984 were required to pay the rentals at the rate of Rs.2.00 per square feet. The petitioners, who were allottees of 1984 phase, were agitating the matter before HUDA as well as this Court, when the rent was sought to be enhanced on the ground that the rent fixed for the petitioners is discriminated. It is not necessary to further refer this aspect in view of the recent judgment of this Court in W.P.Nos.7787 of 1996 and batch, dated 11.08.2005.

In W.P.No.9697 of 1998 (which was also one of the batch cases), the petitioners herein challenged the action of HUDA in demanding rent at Rs.1.50 per square feet per month and also sought a direction to HUDA to collect only Rs.1.00 per square feet. This Court, following the judgment of the Supreme Court in **Union of India v. Cynamide India LTD** and **Rayalaseema Paper Mills LTD v. Government of A.P.** came to the conclusion that there is no merit in the writ petitions filed by the petitioners and the like. However, this Court disposed of the writ petitions giving liberty to the petitioners to make applications for renewal and the respondents were directed to consider those applications, as the petitioners agreed to pay the rent at the rate of Rs.1.50 per square feet per month from 1989 onwards. In obedience thereto, the respondent issued separate communications to each of the petitioners calling upon them to pay the arrears of rent at the rate of Rs.1.50 per square feet for first renewal and later as per the rental regulation as amended from time to time. The first petitioner was requested to pay a sum of Rs.5,18,579/-, the second petitioner a sum of Rs.5,97,624/-, the third petitioner a sum of Rs.3,80,335/- and the fourth petitioner a sum of Rs.3,81,615/- for shop No.56 and another sum of Rs.3,043/- for shop No.13-B. These amounts include the rental arrears at the rate of Rs.1.00 per square feet per month for the initial period of lease, and at the rate of Rs.1.50 per month for the first renewal and later as per the amended rental regulations covering the grant of lease by HUDA.

The learned Counsel for the petitioners, Sri M.S.N.Prasad, strenuously contends that the impugned order is arbitrary and bad for non-disclosure of reasons in sending the letters demanding the rental arrears. He also contends that fixation of rents is not in accordance with Regulation 15 of the Hyderabad Urban Development Authority (Shops) Rental Regulations, 1996 (‘1996 Regulations’ for brevity).

This Court, after giving anxious consideration to the submissions and after perusing the judgment of this Court in W.P.Nos.7787 of 1996 and batch, dated 11.08.2005, as well as the HUDA Regulations, is of the considered opinion that this writ petition is not maintainable and devoid of any merit for two reasons as mentioned infra.

HUDA is a public authority constituted under the provisions of A.P.Urban Areas (Development) Act, 1975, which is assigned with certain statutory duties mostly pertaining to the land area development at macro level as well as micro level, does not, however, mean that as a public authority it cannot enter into contracts or grant licences which are purely governed by private law principles. After constructing the commercial complex, HUDA invited applications and granted lease of shops in accordance with the regulations, which were in force at that time. The grant of lease/licence is therefore, governed by the conditions of lease/ licence and even

according to the petitioners at the time of allotment of the shops to them, the lease amount for the premises was already agreed to. When the transaction between the petitioners and HUDA is governed by such lease/licence, any dispute arising therefrom is certainly a private law dispute and the question of irrationality or arbitrariness would not arise for consideration. In **Asst. Excise Commissioner v. Issac Peter** the Supreme Court dealing with said principle laid down as under.

> In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State, which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. **This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract – or rather more so. It is one thing to say that a contract – every contract – must be construed reasonably having regard to its language. But this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in converse case, i.e., where the State has abundant supplies and wants the licensees to lift all the stocks even if the State suffers loss. The one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate.** The decisions cited by the learned Counsel for the licensees do not support their proposition. In **Dwarakadas Marfatia v. Board of Trustees of the Port of Bombay** it was held that where a public authority is exempted from the operation of a statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine.
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> (emphasis supplied)

The above dictum of the Supreme Court squarely applies to this case as well.

When the petitioners challenged the enhancement of rent before this Court by filing batch of writ petitions, this Court recorded a finding in paragraph No.14 of the judgment dated 11.08.2005 in W.P.Nos.7787 of 1996 and batch to the effect that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot interfere with the fixation of rent, while rejecting the submission of arbitrariness in fixation of rent by HUDA. This finding operates a *Res judicata* against the petitioners. Needless to mention that the principles of *Res judicata* also apply to the proceedings under Article 226 of the Constitution of India (See **The Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra**). Therefore, the petitioners cannot be allowed to raise this contention. The second reason for rejecting the writ petition is this. The petitioners were granted lease/licence of shops in accordance with Hyderabad Urban Development Authority (shops) Rental Regulations, 1980 ('1980 Regulations' for brevity). Regulation No.17 thereof enables HUDA to renew the lease for another term not exceeding five years without conducting public auction, if the present lessee agrees to renew the lease in

his favour at an amount which shall not be less than 50% over the existing monthly rent. 1980 Regulations were superceded by 1996 Regulations . Regulation No.15 of the 1996 Regulations provide that the Vice Chairman, may, at his discretion, renew the lease for a further period, not exceeding three years, without conducting public auction, if the lessee agrees to renew the lease in his favour and to pay enhanced rent as fixed by the Vice Chairman. Regulation No.15 further provides that the enhanced rent shall be suggested by the committee consisting of the Chief Engineer, Chief Planning officer, Estate Officer under the Chairmanship of Secretary. The learned Counsel contends that the impugned orders are issued without following this procedure, and therefore, it must be vested with invalidation. This Court is afraid the contention is misconceived. As noticed hereinabove, when this Court heard the batch of writ petitions filed by the petitioners and others in the earlier round of litigation being W.P.Nos.7787 of 1996 and batch, the petitioners agreed to pay the rent at the rate of Rs.1.50 per square feet from 1989. When the petitioners themselves agreed to pay the rent, the necessity of referring the matter again to the committee as contemplated under Regulation No.15 of the 1996 Regulations would not arise. This Court must hasten to add that the petitioners have been continuously in arrears and continuing in the shops without paying the rent which violates the public law principle that all public property must be leased out or auctioned by conducting public auction to fetch maximum benefit to the State. In view of this, this Court is not inclined to grant any relief to the petitioners.

The Writ Petition, with the above observations, is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

30.11.2005

vs